A.M.D.G.

85-1276

NO.

Supreme Court, U.S.
FILED
DEC 28 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

RICHARD S. RAMOS,

Petitioner,

VS.

JAMES S. YIP and the
ATTORNEY GENERAL FOR THE
STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS, THE NINTH CIRCUIT, PURSUANT TO ART. III, THE U.S. CONSTITUTION, AND TITLE 28 U.S.C. §1257(3)

JURISDICTIONAL STATEMENT

RICHARD S. RAMOS
PETITIONER
448 S. ALEXANDRIA AVENUE
LOS ANGELES, CA 90020

DECEMBER 16, 1985

A.M.D.G.

QUESTION PRESENTED

DID CALIFORNIA VIOLATE PETITIONER'S DUE PROCESS AND EQUAL PROTECTION RIGHTS, SECURED BY BOTH THE FIFTH AND FOURTEENTH AMENDMENTS, U. S. CONSTITUTION, AS WELL AS SIMULTANEOUSLY VIOLATE ARTICLE I, SECTION 26, OF THE STATE CONSTITUTION, BY ERRONEOUSLY UPHOLDING THE SUPREMACY OF A CIVIL CODE STATUTE OF LIMITATIONS OVER THE HERETOFORE, NEVER ASSAILED, ONE HUNDRED THIRTY FIVE YEAR OLD CRIMINAL CODE STATUTE OF LIMITATIONS DURING A CRIMINAL PROSECUTION?

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LIST OF ALL PARTIES

The names of the parties who were active participants in the criminal prosecution are:

James S. Yip, Judge, Municipal Court

California State Franchise Tax Board

While other persona in the hire of the state of California as well as the City of Los Angeles were vigorously involved in the prosecution of this case, they were never personified in any of the captions of the pleadings or appeal briefs, but were described as "The People" or "The Prosecution".

A.M.D.G.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

RICHARD S. RAMOS,

Petitioner-Appellant,

vs.

JAMES S. YIP and the ATTORNEY GENERAL FOR THE STATE OF CALIFORNIA,

Respondent(s)-Appellee.

ON WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, PURSUANT TO ARTICLE III, U.S. CONSTITUTION AS WELL AS THE FIRST AMENDMENT AND TITLE 28 U.S.C., §1257(3)

OPINIONS BELOW

The Appellate Department of the Su perior Court, County of Los Angeles, after briefing and oral argument, filed its opinion on October 14, 1983. affirming the judgment of the lower court. Exhibit A-1, the Appendix.

Subsequently, the Court of Appeal for the Second District via an unsigned postcard denied my petition for writ of mandate. A-2, the Appendix. Similarly, the Supreme Court of the State of California, In Bank, denied my application for stay and petition for hearing, December 16, 1983. A-2 and A-3 respectively, the Appendix. In response to my petition for writ of habeas corpus, the magistrate for the United States District Court, Central District of California, issued an order to show cause. A-4, the Appendix. The. U,S. District Court dismissed the petition on the merits, July 9, 1985. A-5, the Appendix. Judge Tashima signed the order for Judge L.E. Waters, then on vacation, A-6, the Appendix. An order denying my application for certification of probable cause was filed on August 7, 1985, A-7,

the Appendix. An unsigned order from the U.S. Court of Appeals for the Ninth Circuit denying my application for a certificate of probable cause was filed on October 8, 1985. A-8, the Appendix. Finally, an order from the U.S. Court of Appeals for the Ninth Circuit denying my motion for reconsideration of the court's denial of the application for a certificate of probable cause was filed on November 6, 1985. A-9, the Appendix.

This petition for writ of certiorari is timely filed.

JURISDICTIONAL STATEMENT

Pursuant to Rule 21, .1.(c), of the rules of the Supreme Court, the jurisdiction of this tribunal is invoked on the following grounds:

(i) petitioner's motion for reconsideration before Judges Wright and Alarcon, U.S. Court of Appeals for the Ninth Circuit, of the courts order denying the application for a certificate of probable cause, was filed November 6, 1985.

(ii) Title 28, U.S.C. §1257(3), U.S. Code, 1976 Edition

(iii) Article III, Section 2, Clause 2, U.S. Constitution.

This petition, in propria persona, is filed timely and within the 60 day limit.

A.M.D.G.

CONSTITUTIONAL PROVISIONS INVOLVED

***

AMENDMENT I

CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF;OR ABRIDGING THE THE FREDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMELE, AND TO PETITION GOVERNMENT FOR A REDRESS OF GRIEVANCES.

Petitioner factually states that his Constitutional right to petition for redress of grievances has been denied.

***

AMENDMENT V

NO PERSON SHALL BE. . . DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW;

Petitioner factually states that his Constitutional right to due process of law was violated at the state level, commencing with the denial of the motion to dismiss for lack of jurisdiction, through

and including the Ninth Circuit's denial of the petition for writ of habeas corpus, annuling the Magistrate's Order to Show Cause based on the petition's substantive issue.

***

AMENDMENT XIV

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

Petitioner factually states that the obdurate pervesity of both state and federal courts in upholding the supremacy of a civil statute of limitations over a general criminal statute of limitations in a criminal forum, denied equal protection of the laws.

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ARTICLE I
CONSTITUTION OF THE STATE OF CALIFORNIA

Sec. 3. THE PEOPLE HAVE THE RIGHT TO INSSTRUCT THEIR REPRESENTATIVES, PETITION GOVERNMENT FOR REDRESS OF GRIEVANCES, AND ASSEMBLE FREELY TO CONSULT FOR THE COMMON GOOD.

Petitioner factually states that each attempt for redress through the state court system has been frustrated by an unparralled obstinancy to admit the truth, integrity and seasonableness of petitioner's arguments.

***

ARTICLE I
CONSTITUTION OF THE STATE OF CALIFORNIA

Sec. 7. (a) A PERSON MAY NOT BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW OR DENIED EQUAL PROTECTION OF THE LAWS;

Petitioner factually states that the state courts exerted unbridled force and "winking" sophistry to deny petitioner

equal proteciton of the laws.

***

ARTICLE I
CONSTITUTION OF THE STATE OF CALIFORNIA

Sec. 26. THE PROVISIONS OF THIS CONSTITUTION ARE MANDATORY AND PROHIBITORY, UNLESS BY EXPRESS WORDS THEY ARE DECLARED TO BE OTHERWISE.

Petitioner factually states the state courts ignored this section of the Constitution and manufactured a fiction of expediency and convenience to abdicate their oath-sworn duty.

***

ARTICLE III

CONSTITUTION OF THE STATE OF CALIFORNIA

Sec. 1. THE STATE OF CALIFORNIA IS AN INSEPARABLE PART OF THE UNITED STATES OF AMERICA, AND THE UNITED STATES CONSTITUTION IS THE SUPREME LAW OF THE LAND.

Petitioner factually states the state courts arrogantly asserted the primacy of the "system" over the supremacy of law.

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ARTICLE IV
CONSTITUTION OF THE STATE OF CALIFORNIA

Sec. 16. (a) ALL LAWS OF A GENERAL NATURE HAVE UNIFORM OPERATION. (b) A LOCAL OR SPECIAL STATUTE IS INVALID IN ANY CASE IF A GENERAL STATUTE CAN BE MADE APPLICABLE.

Petitioner factually states that the state courts in cooperation with People's counsel were ultra-cavalier in enucleating the sixteenth section of ARTICLE IV, in conjunciton with the first section of ARTICLE III of the Constitution of the State of California by "force-fitting" a statute from the Civil forum into transcendency over a controlling and genertal statute from the Criminal forum during a Criminal prosecution and continued to nurture this unlawful "force-fit" up to and including the highest tribunal of this state.

***

ARTICLE VI
CONSTITUTION OF THE STATE OF CALIFORNIA

Sec. 14. THE LEGISLATURE SHALL PROVIDE FOR THE PROMPT PUBLICATION OF SUCH OPINIONS OF THE SUPREME COURT AND COURTS OF APPEAL AS THE SUPREME COURT DEEMS APPROPRIATE, AND THOSE OPINIONS SHALL BE AVAILABLE FOR PUBLICATION BY ANY PERSON.

DECISIONS OF THE SUPREME COURT AND COURTS OF APPEAL THAT DETERMINE CAUSES SHALL BE IN WRITING WITH REASONS STATED.

Petitioner factually states that the second paragraph of ARTICLE VI was blatantly ignored. Petitioner directs the attention of this Honorable Court to items A-2, and A-3, the Appendix.

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A.M.D.G.

CODE OF CIVIL PROCEDURE
STATE OF CALIFORNIA

§22. Action defined.
An action is an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.

Petitioner factually states that the language of the challenged statute speaks of "action" or "prosecution" which was perverted from its civil connotation to become, a specific, criminal prosecution.

***

§24. Kinds of Action.
Actions are of two kinds:
1. Civil; and
2 Criminal

Petitioner factually states that the mode of prosecution was that of a misdemeanor (crime) violation in all respects except that a civil statute of limitations supplanted the criminal statute limitation.

§31. Criminal Action.
The Penal Code defines and provides for the prosecution of a criminal action.

Petitioner factually states that the California Penal Code makes no distinction between prosecutions for Penal Code misdemeanors and Labor Code or Vehicle Code or Water Code or Commercial Code or Agricultural Code or Probate Code Misdemeanors. Therefore, all MISDEMEANORS are subject to the Penal Code.

§32. Merger of Civil and Criminal Action.
When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

Petitioner factually states that California Revenue and Taxation Code, §19401, admits of both a civil and criminal remedy and that the prosecution impermissibly and in vilation of the Fifth and Fourteenth Amendments, merged civil and criminal statutes

during a criminal prosecution.

***

CALIFORNIA REVENUE AND TAXATION CODE

§19401 Return or information not filed or false or fraudulent; penalty, action to recover; offense; punishment

Any person who, with or without intent to evade any requirement of this part or any lawful requirement of the Franchise Tax Board under this part, fails to file any return or to supply any information required under this part, or who. with or without such intent, makes, renders, signs, or verifies any false or fraudulent return or statement, or supplies any false or fraudulent information is liable to a penalty of not more than one thousand dollars ($1,000). The penalty shall be recovered by the Attorney General or the counsel for the Franchise Tax Board in the name of the people by action in any court of competent jurisdiction.

The person is also guilty of a misdemeanor and shall upon conviction be fined not to exceed one thousand dollars ($1,000) or be imprisoned not to exceed one year, or both, at the discretion of the court.

Petitioner factually states that the first paragraph of §19401 admits of a civil remedy

while the second paragraph, simultaneously, admits of a criminal remedy. The state elected its criminal remedy and unconstitutionally imported the civil statute of limitations in order to support its wanton and deceitful disregard of petitioner's state and federal due process and equal protection rights in the criminal arena.

***

§19404 Statute of limitations
Any action or prosecution under this chapter shall be instituted within four years after the commission of the offense.

Petitioner factually states the Revenue and Taxation Code is a CIVIL CODE. The prosecution brazenly inserted this section of the code under the pretended guise of a "special" statute. The state courts genuflected to this imposter in order to prevent the petitioner from prevailing on the jurisdictional defense of the Penal Code

one year statute of limitations, governing ALL misdemeanors.

***

CALIFORNIA PENAL CODE

§801 One-Year Limitation
(a) Except as provided in subdivision (b), an indictment for any misdemeanor shall be found or an information or complaint filed within one year after its commission.

Petitioner factually states that the offenses were alleged to have been committed in both 1979 and 1980, while the misdemeanor complaint was not filed until June, 1982, a full year and two months after the statute had run on count one, and a full two months after the one year statute had run on count two.

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STATEMENT OF THE CASE

This case commenced with the filing of a misdemeanor complaint on June 29, 1982, in the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California. After arraignment on August 7, 1982 and appointment of a public defender, for good cause, the case was continued to October 14, 1982, at which time two significant things happened: the public defender was relieved and petitioner filed a motion to dismiss for lack of jurisdiction on several grounds, inter alia, Penal Code §801, Statute of Limitations presented an unconditional and absolute bar to a misdemeanor prosecution. A hearing on the motion was scheduled for October 26, 1982, at which time the People filed its opposition to

petitioner's motion, claiming merely that the statute of limitations for failure to file an income tax return is four years from the commission of the offense, citing Revenue and Taxation Code §19404, to wit:

> "Any action or prosecution under this chapter shall be instituted within four years after the commission of the offense."

The People failed to allege that §19404 was a "specific" or "special" statute. Nor did they allege that a §19401 misdemeanor was beyond the proscription of Penal Code §801. Moreover, the People's opposition was noticeably barren of a single corroborative State Court of Appeal or Supreme Court opinion, simply because since its enactment in 1935, it has never been the dispositive authority in a misdemeanor prosecution.

The trial court validated the People's

§19404 argument, all in violation of petitioner's due process and equal protection rights guaranteed by both the Fifth and Fourteenth Amendments as well as the First Amendment, U.S. Constitution; Article I, sections 3, 7 and 26, together with Article III, §1 and Article IV, §16, California State Constitution. In an effort to prevent trial of the two misdemeanor counts, a petition for a Writ of Prohibition was filed with the Appellate Department, Superior Court, on November 2, 1982, and was denied the same day by Judge Philip F. Jones.

Incredibly enough, the denial of the petition for Writ of Prohibition, Appendix A-10, claimed the four year limitation to be a "special" code provision prevailing over the general one year limitation of Penal Code §801. This pronouncement utter-

ly disregarded the Constitutional mandates contained in Article I, §26 and Article IV, §16, of the State Constitution. Simultaneously, article I, §7(a) of the State Constitution, together with the due process and equal protection clauses, U.S. Constitution, were violated.

Trial was held on November 5, 1982, during which, this petitioner remained mute, pursuant to the jurisdictional bar of Penal Code §801, to wit:

> "§801 One-year Limitation
> (a) Except as provided in subdivision (b), an indictment for any misdemeanor shall be found or an information or complaint filed within one year after its commission."

On November 8, 1982, the jury's verdict was guilty; imposition of sentence was suspended, pending the outcome on appeal.

Notice of appeal was filed timely on November 15, 1982 with petitioner-appellant's opening brief filed on July 21, 1982, raising several jurisdictional issues, inter alia, Penal Code §801, one year limitaiton. Respondent's brief was filed on August 16, 1982.

In addressing the jurisdictional issue raised by Penal Code §801, respondent, while completely failing to raise the issue of a "specific" statute in any of its pleadings or trial argument, quotes the Revenue and Taxation Code §19404, and then makes a quantum leap without benefit of logic, experience or authority to conclude its distorted reasoning by quoting from Estate of Kramme (1978) 20 Cal.3d 567,576:

> "[i]f a specific statute is enacted covering a particular subject, the specific statute con-

trols and takes priority over a general statute encompassing the same subject."

Since respondent failed to raise this contention in the trial court, the issue of §19404 being a "specific" statute, is not available to him on appeal. (People v. York (1980) 108 Cal.App.3d 779, 788.) Furthermore, the entire legislative history of §19404 since 1935 is absolutely void of any reference to its being a "specific" statute, including the language in its most recent amendment, (now six years),Appendix, A-12.

The Appellate Department, Superior Court filed its opinion and judgment, affirming the lower court on October 14, 1983. Thereafter, my petition for writ of mandate filed November 28, 1983, in the Court of Appeal for the Second Appellate District, was denied December 6, 1983. Appendix, A-2.

Exhaustion of State remedies was perfected upon the filing of a petition for hearing on December 12, 1983, in the Supreme Court of California. Denial of the petition was filed on December 16, 1983. Appendix, A-3.

The remittitur was filed with the Municipal court on January 1, 1984, and imposition of sentence was scheduled for March 3, 1984, at which time, the sentence required the filing of returns for the years 1979, 1980, 1981, 1982 and 1983 along with 400 hours of community service, plus two years formal probation.

On June 4, 1984, petition for writ of habeas corpus was filed and the following day, June 5, 1984, United States Magistrate, John R. Kronenberg issued an order to show cause. Appendix, A-4.

Thirteen months and four days later,

U.S. District Judge Tashima, dismissed the petition. Appendix, A-5 and Appendix, A-6.

Next, U.S. District Judge Real denied petitioner's application for certificate of probable cause on August 7, 1985. Appendix, A-7. Similar application for certificate of probale cause was filed with the U.S. Court of Appeals for the Ninth Circuit before Judges Wright and Alarcon and was denied September 30, 1985, Appendix, A-8.

Finally, petititioner's motion for reconsideration was denied on October 25, 1985. Appendix, A-9, filed November 6, 1985 and from which this petition for certiorari is filed timely.

***

REASONS WHY THE QUESTION PRESENTED IS SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION.

A conflict of singular gravity and Constitutional magnitude has arisen by virtue of California's foundationless committment to an obsessively compulsive validation of a civil statute of limitations over a general criminal statute of limitations commencing with the October 26, 1982 denial of petitioner's motion to dismiss because of Penal Code §801 (now §802, Appendix, A-11), in the Municipal court and through each subsequent step in the appeal process, including the Supreme Court of California.

This misalliance was further compounded by both the U.S. District Court and the Court of Appeals for the Ninth Circuit by

the District Court Magistrate's order to show cause, on the one hand, Appendix, A-4, while on the other hand, the circuit judges denial of the motion for reconsideration, Appendix, A-9, on the grounds that there was no quesiton of substance on appeal and habeas corpus relief is available only if a person is held is custody in violation of the Constitution or federal laws.

What could be more substantial than dispensing justice in the criminal forum by means cosmetically sanitized from the civil forum? And do not the cases of United States ex rel. Wirtz v. Sheehan, 319 F.Supp. 146 (1970); United States ex rel. Luzaich v. Catalano, 401 F.Supp. 454 (1975) and Perry v. Mulligan, 399 F.Supp. 1285 (1975), citing Jones v. Cunningham, 371 U.S. 236, 239 (1963) equate probation with "in custody"?

Another reason for certiorari is the fact that California, in its eagerness to get convictions in failure to file cases, ignored the documented history of the Legislature's intent. Since 1935, through and including the most recent 1984 amendment, there is absolutely no supporting evidence for the proposition that:

> Revenue and Taxation Code §19404 is the applicable statute for a §19401 misdemeanor violation.

or that:

> Revenue and Taxation Code §19404 is a "special" code section governing §19401 failure to file.

or that:

> Revenue and Taxation Code §19404 is a "specific" code section superior to Penal Code §801.

In 1935, when the Legislature was forming the CIVIL CODE for revenue and taxation, under §19404, specific mention is made to a cross reference which reads:

> "Four year limitation generally, see Code of Civil Procedure, §§337, 343."

This cross reference alone makes the Legislature's intent clear, unambiguous and logical. Obviously, the intent is that in a civil prosecution for a failure to file, the state will have four years to file its complaint, the four year limitation being in perfect harmony with the existing Code of Civil Procedure four year limitation as defined in §§337,343. Any other interpretation of the Legislature's intent would be grossly barbarian.

Furthermore, in 1935, the Legislature knew that on April 20, 1850, in the FIRST SESSION, an ACT to regulate proceedings

in Criminal Cases was passed, Chapter 119, which, in pertinent part, reads:

> "§99. An indictment for any misdemeanor must be found within one year after its commission." Appendix, A-12.

Since California's admission into the Union in 1850, the Statute of Limitations for any misdemeanor has been, is, and will continue to be ONE YEAR, Revenue and Taxation Code §19401 NOT EXCEPTED!!!

Unimpeacheable corroboration is found in a letter, Appendix, A-13, addressed to this petitioner, dated October 11, 1984, under the signature of Edgar A. Kerry, which, in pertinent part, reads:

> "Absent specific language to the contrary that creates a longer period of limitation for a misdemeanor under the Labor Code, Fish and Game Code, etc., the one year period of limitation for misdemeanors set forth in newly enacted Penal Code

> §802 is applicable to all misdemeanors. AB 2764 does not change the law with regard to misdemeanors."

Still another reason for certiorari is that the state and federal courts below have fashioned a uniquely unusual course of judicial proceedings in validating a civil statute of limitations over the criminal statute of limitations. This capricious unorthodoxy virtually mandates an exercise of this Court's supervision for rectification.

Yet another reason for certiorari is that the question has the vitality of

> ". . . greyhounds in the slips,
> Straining upon the start."
> Henry V, Act III, Scene ii

as well as significantly affecting the entire tax paying populaiton of California and is of substantial importance in the administration of state income tax law.

It is beyond dispute that the question raised by way of this petition for certiorari focuses on a direct and irreconcilable conflict which is odiously repugnant to the Fifth and Fourteenth Amendments of the U.S. Constitution.

Furthermore, it is within this petitioner's personal knowledge that since January, 1982, California has criminally prosecuted at least nine individuals for a §19401 misdemeanor, all of whom, vigorously and strenuously asserted the supremacy of Penal Code §801 over Revenue and Taxation Code §19404, with at least five of the nine imprisoned. These Revenue and Taxation misdemeanor complaints have generated domestic havoc, debilitating anxiety, financial exhaustion, and degrading imprisonment. These kinds of mischief flow directly from the state's

stubbornly obdurate refusal to obey the laws for its governance. These kinds of mischief are proper objects for this august tribunal to cancel, to void, to nullify through its appropriate exercise of power in granting the writ of certiorari.

Since the four year limitation of Revenue and Taxation Code §19404 has been extended to six years, did the California Legislature intend that the six year limitation apply equally for a §19401 misdemeanor as well as a §19406 felony? Are the Fifth and Fourteenth Amendments to the U.S. Constitution to be in eternal conflict with California because of California's unconstitutional impertinence for failure to acknowledge Article III, §1, of the State Constitution? Certiorari is the proper and suitable alternative to state tyranny.

Briefly, the constitutional infirmity of elevating a civil code statute of limitations above a criminal code statute of limitations during a criminal prosecution, is a cross-pollination of proceedures, the stench of which, is offensive to the due process and equal protection clauses of the U.S. Constitution.

Corrective and Constitutional surgery, via the grant of the writ for certiorari, will enucleate this hideous cancer, injected into the blood-stream of the body-politic by contaminated prosecutors and courts at both state and federal levels.

Justice demands the healing remedy of a writ of certiorari to restore the supremacy and constitutionality of a criminal statute of limitations over a civil limitation during a criminal prosecution.

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CONCLUSION

Petitioner, an honorably discharged member of the United States Marine Corps, who engaged the enemy at Iwo Jima, February 19, 1945, and who vigorously continues to uphold and defend the Constitution of the United States from all enemies, foreign and domestic, respecfully requests that this venerable Tribunal grant this petition for a writ of certiorari based on the reasons set forth on page 24, through and including page 32, as well as other appropriate relief, thereby reaffirming that:

> "government of the People,
> by the People,
> and for the People,
> shall not perish from the earth."

A.M.D.G.

CERTIFICATE OF SERVICE

RICHARD S.RAMOS certifies that he served the within JURISDICTIONAL STATEMENT, and APPENDIX ON counsel for the appellee by enclosing three copies thereof in an envelope, first class postage prepaid, addressed as follows:

OFFICE of ATTORNEY GENERAL
HEAD of the CRIMINAL DIVISION
CALIFORNIA STATE DEPT. of JUSTICE
3500 WILSHIRE BLVD.
LOS ANGELES, CA. 90010

FREDERICK R. BENNETT, DEPUTY CO.COUNSEL
648 HALL of ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CA. 90012

JACK L. BROWN, DEPUTY CITY ATTORNEY
1700 CITY HALL EAST
200 NORTH MAIN STREET
LOS ANGELES, CA. 90012

and depositing same in the UNITED STATES MAILS at LOS ANGELES, CALIFORNIA, this 27 th Day of DECEMBER, 1985.

RICHARD S. RAMOS

APPENDIX

A.M.D.G.

A-1

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, vs. RICHARD S. RAMOS, Defendant and Appellant.	Superior Court No. CR A20655 Municipal Court of the Los Angeles Judicial District No. 31230190 OPINION AND JUDGMENT

Appeal by defendant from Judgment of the Municipal Court, James S. Yip, Judge.

JUSGMENT AFFIRMED

For Appellant - In Propria Persona

For Respondent - Ira Reiner, City Attorney
Jack L. Brown, Deputy City Attorney
Greg Wolff, Deputy City

A.M.D.G.

A-1a

Attorney.

-oOo-

Defendant appeals from a judgment of conviction for two counts of a violation of Revenue and Taxation Code section 19401 (failing to file a state income tax return).

The record reveals that appellant was arraigned on August 6, 1982 and that a deputy public defender was appointed to represent him. On October 14, 1982, appellant filed a "Motion to Dismiss for Lack of Jurisdiction" and also elected to represent himself. The deputy public defender was then relieved. On October 26, 1982 appellant's motion to dismiss for lack of jurisdiction was denied. Two days later at a pretrial hearing on October 28, 1982, appellant filed a document entitled

"Special Appearance." At the hearing, appellant asserted his right to remain silent pursuant to the grounds set forth in his "Special Appearance" document. The court then advised appellant that it was to his advantage to seek an attorney. Appellant still maintained that he wanted to represent himself. Appellant then filed a Petition for Writ of Prohibition raising many of the same points that appellant now raises on appeal. The petition was filed on November 2, 1982, and was denied that same day.

The trial began on November 5, 1982. At trial, McKinley Frank, a tax compliance representative for the Franchise Tax Board, testified for the prosecution. He produced appellant's W-2 forms for 1979 which reflected a total income of over $13,000 and ap-

pellant's W-2 forms for 1980 showing that appellant made over $16,000 that year. Mr. Frank testified that several searches of the Franchise Tax Board's records revealed that appellant had failed to pay state income tax for either 1979 or 1980. Appellant, in reliance on his position that the trial court lacked jurisdiction to hear the matter, remained silent and refused to offer any evidence in his own behalf. On November 8, 1982, the jury found appellant guilty of both charges. After returning a verdict of "guilty", the jury was excused. The court then took a brief recess. Following the recess, the prosecutor asked the court to stop "the people in the hallway from harassing the excused jurors." The judge denied the request noting that: "I don't have any control over who the jury

talks to whether they want to talk to them or not."

On November 12, 1982, the court suspended imposition of sentence and placed appellant on formal probation for two years on condition that he do 400 hours of community service and file his 1979 and 1980 state income tax returns. The court then ordered that the execution of the sentence be stayed pending appeal. The prosecutor requested that sentence not be stayed since appellant was already required to file income tax returns under state law. At that point, the judge asked for an estimate of appellant's tax liability. The prosecution then got an estimate from a Ms. Wroe, a Franchise Tax Board employee who sat as a spectator during the trial. The prosecution informed the court that appellant's tax li-

ability amounted to $1,336.27.

Appellant makes many contentions on appeal. He contends that the trial court committed reversible error by: (1) ignoring appellant's challenge to the Franchise Tax Board's jurisdiction over him; (2) filing the action beyond the statutory limitation period of one year pursuant to Penal Code section 801; (3) allowing the prosecution and its only witness to use the term "income" when it is not defined by the revenue and Taxation Code; (4) failing to inform appellant of the elements of the offense and the defenses to it; (5) admitting the unsworn testimony of a spectator; (6) convicting appellant without a sufficient showing of criminal intent; (7) allowing such vague terms as "to file," "return," and "income" and "person" to be

used; (8) failing to afford appellant due process since he was forced to stand mute at trial; (9) allowing prosecutorial misconduct by way of allowing the prosecutor to urge the court to constrain the first amendment right of the spectators and jurors; and (10) disclosing appellant's W-2 forms to the City Attorney without a proper judicial order and allowing testimony concerning the computation of taxable income which is at variance with the formula set out in section 17073 of the Revenue and Tax Code.

Appellant challenges the jurisdiction of the trial court on the basis that there is no proof beyond a reasonable doubt that the alleged violaitons were committed in Los Angeles County. Penal Code section 1462 provides that "[e]ach municipal and

justice court shall have jurisdiction in all criminal cases amounting to misdemeanor, where the offense charged was committed within the county in which such municipal or justice court is established . . ." revenue and Taxation Code section 19407 provides that: "the place of trial for the offenses enumerated in this chapter of this Code shall be in the county of residence or principal place of business of the defendant . . . ." Since the evidence introduced at trial showed that the appellant resided in Los Angeles, it was proper for the trial court to determine that the violation occurred there. Thus, Los Angeles Municipal Court acquired personal jurisdiction over appellant when he appeared for arraignment.

Appellant contends that section 19404

of the Revenue and Taxation Code, the specific four year statute of limitation concerning tax code violations, does not take precedence over the general criminal one year statute of limitations set forth in Penal Code section 801. However, it is well established that where a specific statute is enacted covering a particular subject, the specific statute controls and takes priority over a general statute covering the same subject. (See Estate of Kramme (1978) 20 Cal.3d 567, 576.) Therefore, since the action was filed well within the four year statute of limitation period as set forth in Revenue and Taxation Code section 19404, there is no statute of limitation bar.

Next, appellant contends that since the Revenue and Taxation Code does not de-

fine the term "income," the term should not have been allowed to have been used by the prosecution and the prosecution's sole witness. Appellant also contends that the terms "to file," "return," and "person," are not defined and are therefore unduly vague. We find that the terms have commonly accepted meanings and are not unduly vague. Courts "are required to give effect to statutes 'according to the usual, ordinary import of the language employed in framing them'. (Moyer v. Workmen's Comp. Appeals Bd. (1973) 10 Cal.3d 222, 230, quoting In Re Alpine (1928) 203 Cal. 731, 737.

Appellant contends that the trial court erred in failing to advise him of the elements of the offense with which he was charged and of the legal and factual

defenses to that charge. Since appellant has not provided us with a settled statement or a reporter's transcript of the October 14, 1982 proceedings, the record is not sufficient to allow us to examine the proceedings to determine whether or not appellant was expressly advised of the elements of the offense and the defenses to it. Under the circumstances we must assume that appellant was properly advised. (Denham v. Superior Court (1970) 2 Cal.3d 557, 564.)

As his fifth contention, appellant argues that the "unsworn testimony of Ms. Wroe, the Franchise Tax Board employee, was improper. In response to the court's question as to the extent of appellant's tax liability, Ms. Wroe provided the information that appellant

owed $1,336.27 in state taxes. This information, however, came out during an open court discussion following the pronouncement of the guilty verdict and the imposition of sentence. Thus, the informationprovided by Ms. Wroe did not affect the conviction. In fact, after the information was received, the court decided to grant appellant's request to stay execution of the judgment pending appeal.

Appellant contends that there is insufficient showing of criminal intent. However, the only intent required was that of not filing a tax return. (See People v. Hood (1969) 1 Cal.3d 444,456-457.) As with other general intent crimes, Revenue and Taxation Code Section 19401 does not require that appellant actually intended to violate the

the law. Since appellant received a certified letter from the Franchise Tax Board informing him of his failure to file a return, appellant was well aware of his failure to file a return.

Appellant also contends that he was denied a fair trial because he was forced to stand mute in order to preserve the integrity of his jurisdiction challenge. However, appellant was informed of the court's determination of his jurisdiction challenge. Also, appellant had been advised of his right to counsel. In fact at one time he had a public defender representing him but he chose to relieve the public defender and represent himself. Thus, appellant cannot now complain of his decision to stand mute and not provide a defense. (See

Farrell v. Supr. Court (1978) 20 Cal.3d 889, 891.)

Appellant further contends that the prosecutor's request for the court to stop spectators from harassing the dismissed jury amounted to prosecutorial misconduct. However, since the court denied the request, it had no effect on the judgment of conviction.

Finally appellant contends that it was error for the Franchise Tax Board to disclose appellant's W-2 forms to the City Attorney. Appellant is actually contesting the admissibility of the W-2 forms. He also contests the formula used by the trial court to determine taxable income. However, since appellant failed to raise these contentions in the lower court, he cannot now raise them on

appeal. (People v. York (1980) 108 Cal. App.3d 779, 788.)

The judgment is affirmed.

/s/
Bernstein, Judge

/s/
Foster, Presiding Judge

/s/
Reese, Judge

FILED

OCT. 14, 1983

John J. Corcoran, County Clerk

BY A.B. HARDEY, DEPUTY

A.M.D.G.

A-2

Los Angeles, Cal. DEC 6 - 1983

TITLE Richard S. Ramos

vs.

Appellate Dept. Superior Court

No. B002391

The Court:

Petition for writ of mandate is denied.

Clay Robbins, Clerk

(facsimile, Court of Appeals post card)

A.M.D.G.

A-3

ORDER DENYING HEARING AFTER JUDGMENT BY

THE COURT OF APPEAL

2nd District, Division---, ----No. B002391

IN THE SUPREME COURT OF THE STATE

OF CALIFORNIA

IN BANK

RICHARD S. RAMOS, Petitioner,

v.

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

OF LOS ANGELES, Respondent;

PEOPLE, Real Party in Interest

Application for stay and petition for

hearing DENIED.

BIRD

Chief Justice

A.M.D.G.

A-4

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD S. RAMOS	)	NO. CV
Petitioner	)	84-4112-LEW(K)
v.	)	
JAMES S. YIP, Judge, et al.,	)	ORDER TO SHOW CAUSE

Based upon the petition filed herein and good cause appearing:

IT IS HEREBY ORDERED that respondent or his counsel file a return with this Court within 23 days of the date of this order, to show cause, if there be, why a writ of habeas corpus should not be issued herein.

IT IS FURTHER ORDERED that the Clerk of this Court forthwith serve a copy of this Order upon respondent by serving a copy of the petition and of this order upon the City Attorney for the City of Los

Angeles, official counsel for respondent, as well as upon petitioner, and that respondent, or his counsel serve a copy of the return upon petitioner prior to the filing thereof. Petitioner has 15 days from thedate of receipt of the return in which to file his traverse.

DATED: This 5 day of June, 1984

John R. Kronenberg

United States Magistrate

A.M.D.G.

A-5

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD S. RAMOS,	)	NO. CV
Petitioner,	)	84-4112-LEW(K)
v.	)	
JAMES S. YIP, Judge,	)	
et al.,	)	JUDGMENT
Respondent(s)	)	

IT IS ADJUDGED that the petition be dismissed on the merits.

DATED: This 9th day of July, 1985

/s/ C. Tashima

FOR LAUGHLIN E. WATERS

UNITED STATES

DISTRICT JUDGE

A.M.D.G.

A-6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD S. RAMOS,) NO. CV

Plaintiff,) 84-4112-LEW(K)

v.)

JAMES S. YIP, Judge,)

et al.,) ORDER

Defendant(s))

Pursuant to 28 U.S.C. §636, the Court has reviewed the record, the pleadings, the findings of the United States Magistrate, and the objections and concurs with and adopts those findings (the following was hand written by Judge C. Tashima), after having made a de novo determination of those portions of the record to which objection has been made (end handwritten entry).

Each party will bear its own costs.

A.M.D.G.

IT IS FURTHER ORDERED that the clekr of the Court shall serve a copy of the judgment, of this Order and of the findings of the United States Magistrat by United States mail upon counsel of record for both parties.

DATED: This 9th day of July, 1985

/s/ C. Tashima

FOR LAUGHLIN E. WATERS

UNITED STATES

DISTRICT JUDGE

A.M.D.G.

A-7

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD S. RAMOS,	)	NO. CV
Petitioner,	)	84-4112-LEW(K)
v.	)	ORDER DENYING
JAMES S. YIP, Judge, et al.,	)	APPLICATION FOR CERTIFICATE OF
Respondent.	)	PROBABLE CAUSE

Pursuant to 28 U.S.C. §636 and 28 U.S.C. §2253, the Court has reviewed the application and notice of appeal and the findings of the United States Magistrate submitted on June 13, 1985 and adopted by the Court in support of its judgment of dismissal entered on July 11, 1985 and finds that the application is frivolous and without merit.

Pursuant to 28 U.S.C. §1915(a), this Court certifies that the appeal is not

taken in good faith for the reasons set forth in the aforesaid findings on file herein.

IT IS ORDERED that the application is denied.

DATED: This 7th day of August, 1985.

/s/ Real

FOR LAUGHLIN E. WATERS

UNITED STATES

DISTRICT JUDGE

A.M.D.G.

A-8

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 08 1985

CLERK, U.S. COURT OF APPEALS

RICHARD S. RAMOS,) No. 85-6248

Plaintiff-Appellant) DC No. CV

vs.) 84-4112-LEW

JAMES S. YIP and the) Central

ATTORNEY GENERAL FOR) California

THE STATE OF CALIFORNIA) ORDER

Defendants-Appellees)

Before: WRIGHT and ALARCON, Circuit Judges

The application for a certificate of probable cause is denied.

CR CAL 9/30/85

A.M.D.G.

A-9

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 06 1985

CLERK, U.S. COURT OF APPEALS

RICHARD S. RAMOS,	) NO. 85-6248
Plaintiff-Appellant,	) DC No. CV
vs.	) 84-4112-LEW
JAMES S. YIP and the	) Central
ATTORNEY GENERAL FOR	) California
THE STATE OF CALIFORNIA,	)
Defendants-Appellees.	) ORDER

Before: WRIGHT and ALARCON, Circuit Judges

Petitioner's motion for reconsideration of the court's October 8, 1985 order denying his application for a certificate of probable cause is denied. Petitioner has not presented questions of substance on appeal, a prerequisite to the issuance of

a certificate of probable cause. Gardner v. Pogue, 558 F.2d 548, 551-52 (9th Cir. 1977). Relief under 28 U.S.C.§2254 is available only if a person is being held in custody in violation of the Constitution of federal laws. Engle v. Issac, 456 U.S. 107, 119 (1982); Gutierrez v. Griggs, 695 F.2d 1195, 1197 (9th Cir.(1983)

10/25/85SP

CR CAL 9/30/85

A.M.D.G.

A-10

DEPT. 70

Nov. 2, 1982 SUPERIOR COURT OF CALIFORNIA,

COUNTY OF LOS ANGELES

HONORABLE PHILIP F. JONES, JUDGE

A.B. HARDY, Deputy Clerk

C 430 754 (M.C. No. 31230190)

RICHARD S. RAMOS

VS.

THE MUNICIPAL COURT OF THE LOS ANGELES

JUDICIAL DISTRICT

AND

PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

NATURE OF PROCEEDINGS:

PETITION FOR WRIT OF PROHIBITION

The court, having read and considered the Petition for Writ of Prohibition in the above entitled matter, now makes the fol-

lowing order:

Petition denied. The complaint on its face alleges a misdemeanor committed by petitioner within the Los Angeles Judicial District. That is sufficient to confer jurisdiction on the Municipal Court of that district to try the offense. Proof of the jurisdictional allegation and of the elements of the crime are a matter for trial, not for prevention of trial. The complaint is not defective in alleging different violations of revenue and Taxation Code § 19401 in the conjunctive. Proof of either violation will suffice. The special code provision providing for a four year limitation for prosecutions under Chapter 23, Division 2, Part 10, revenue and Taxation Code, prevails over the general provision relating to misdemeanors in Penal Code §801.

A.M.D.G.

A-10b

A copy of this order is transmitted this date addressed as follows:

RICHARD S. RAMOS

448 South Alexandria Avenue

Los Angeles, Ca 90020

PRESIDING JUDGE

Los Angeles Municipal Court

110 North Grand Avenue

Los Angeles, Ca 90012

CITY ATTORNEY

1700 City Hall East

200 North Main Street

Los Angeles, Ca 90012

DEPT. 70

MINUTES ENTERED

November 2, 1982

COUNTY CLERK

MINUTE ORDER

A.M.D.G.

A-11

West's ANNOTATED CALIFORNIA CODES

PENAL CODE Sections 681 to 939

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§802. Offenses not punishable by death or

imprisonment.

Prosecution for an offense not punishable by death or imprisonment in the state prison shall be commenced within one year after commission of the offense.

(Added by Stats. 1984, c. 1270, §2)

Law Revision Commission Comment 1984 Addition

Section 802 continues the substance of former Section 801. Section 802 is applicable to misdemeanors and infractions.

A.M.D.G.

A-12

FIRST SESSION Page 275

Chap. 119

An ACT to regulate proceedings in Criminal Cases.

Passed April 20, 1850

TITLE II Page 282

Of the time of commencing Criminal Actions.

§99. An indictment for any misdemeanor must be found within one year after its commission.

A.M.D.G.

A-13

Assembly, California Legislature
Assembly Committee on Criminal Law and Public Safety
State Capitol (916) 445-3268
Byron D. Sher, Chairman October 11, 1984

Mr. Richard Ramos
448 South Alexandria
Los Angeles, CA 90020

Dear Mr. Ramos:

Thank you for your recent letter inquiring as to the scope of Assembly Bill 2764 and requesting copies of this legislation. As you may have read by now, the Governor recently signed AB 2764 which will appear as Chapter 1270, Statutes, 1984. I attach two copies of the bill per your request. Absent specific language to the contrary

that creates a longer period of limitation for a misdemeanor under the Labor Code, Fish and Game Code, etc,. the one year period of limitation for misdemeanors set forth in newly enacted Penal Code Section 802 is applicable to all misdemeanors. AB 2764 does not change the law with regard to misdemeanors.

Finally, I am not aware of any other exceptions to Penal Code Section 801 other than Health and Safety Code Section 18020.5. Note, however, that the Section 18020.5 exception deals only with when theone year period shall commence to run. It does not provide for a period in excess of one year for a misdemeanor. Further, to determine whether other exceptions exist would require a substantial research effort which

is beyond our current staff ability to conduct.

I hope that this information is of assistance to you.

Sincerely,

/s/ Edgar A. Kerry

Edgar A. Kerry

Chief Consultant

EAK:ab

Enclosures